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In Reply Refer to:

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In re: **KRDE(FM), Globe, Arizona**
Facility ID No. 37577
File No. BALH-20070508ABZ

**Application for Assignment of License
Petition to Deny**

Dear Mr. Pelley and Counsel:

We have before us the above-captioned application (the "Assignment Application") seeking approval for the proposed assignment of the license for Station KRDE(FM), Globe, Arizona (the "Station"), from Linda C. Corso ("Corso") to Sunburst Media-KRDE, LLC ("Sunburst"). On June 13, 2007, Douglas Pelley ("Pelley") filed a Petition to Deny the Assignment Application.¹ For the reasons stated below, we dismiss the Pelley pleading as a Petition to Deny, consider and deny it as an informal objection, and grant the Assignment Application.

Background. As described in the pleadings, Pelley is an acquaintance of Corso's former husband, Rich Potyka ("Potyka"). Although never formally employed at the Station, Pelley contends that he performed various maintenance and engineering work at the Station since the mid-1990's. In 1996, Corso filed a Petition for Divorce in Arizona court. In January 1997, the Superior Court for the State of Arizona, in and for Gila County, issued a Decree of Dissolution of Marriage.² Pelley opposes grant of the

¹ Corso filed an Opposition to Petition to Deny on June 27, 2007, and Sunburst filed an Opposition of Sunburst Media-KRDE, LLC to Petition to Deny on June 27, 2007. On August 13, 2007, Pelley filed a Comment in Response to Opposition to Petition to Deny ("Comment"). On September 27, 2007, Corso filed a Motion for Leave to File Response, which included a Response to Comment to Opposition to "Petition to Deny" ("Response to Comment").

² *In Re the Marriage of Linda Carol Potyka and Richard Louis Potyka*, Decree of Dissolution of Marriage, Superior Court of the State of Arizona, in and for Gila County, No. DO 96-215, January 3, 1997 ("Divorce Decree").

Assignment Application based on his claim that he is still owed compensation for the work done at the Station. He further argues that Corso neglected to assign the Station's license to Potyka, as directed by the Arizona court in the Divorce Decree. Pelley maintains that he and Potyka had a verbal understanding whereby, in lieu of a salary, the monetary compensation for his services would come from the proceeds of such a Station sale.³

Discussion. Standing. Pelley opposes grant of the Assignment Application based on an alleged monetary debt owed him by the assignor's former spouse. Section 309(d)(1) of the Communications Act of 1934, as amended (the "Act"),⁴ provides that only a "party in interest" may file a petition to deny a proposed assignment. To claim such standing, a petitioner must allege and prove that grant of the application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.⁵ The petitioner must also demonstrate a causal link between the claimed injury and the challenged action.⁶ In this regard, Pelley fails to "plead 'injury in fact' traceable to the conduct complained of and likely to be redressed by the requested relief."⁷ We agree with Sunburst when it states that the relief Pelley "seeks from the Commission -- denial of the subject license assignment -- would have no impact upon the sole remedy he claims to deserve -- his desire to obtain monetary payment from [Corso's ex-husband]."⁸ Pelley's dispute over the claim for payment is simply insufficient to confer standing.

We additionally note that the Commission may also accord party in interest status to a petitioner who demonstrates either that he resides in the service area of the station that is the subject of the petition or that he listens to or views the station regularly and that such listening or viewing is not the result of transient contacts with the station.⁹ Pelley fails to establish listener/residence status as a basis for standing. Finally, a petitioner must provide an affidavit or declaration that establishes standing.¹⁰ Pelley fails to provide such an affidavit or declaration.

³ Petition to Deny at 2.

⁴ 47 U.S.C. § 309(d)(1).

⁵ See, e.g., *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC 2d 696 (1978).

⁶ See *Lawrence N. Brandt*, 3 FCC Rcd 4082 (1998); *Sierra Club v. Morton*, 405 U.S. 727, 733-4 (1972).

⁷ *Conn-2 RSA Partnership*, Memorandum Opinion and Order, 9 FCC Rcd 3295, 3297 (1994) (quoting *Orange Park Florida T.V., Inc. v. FCC*, 811 F.2d 664, 670 (D.C. Cir. 1987)).

⁸ Sunburst Opposition at 3. Sunburst also notes that Pelley's claims involve no party to the application itself, but rather, merely allege a monetary debt of a former spouse.

⁹ See *CHET-5 Broadcasting of Poughkeepsie, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 13041 (1999).

¹⁰ See *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, Memorandum Opinion and Order, 82 FCC 2d 89 (1980); see also *Infinity Broadcasting Corp. of California*, Memorandum Opinion and Order, 10 FCC Rcd 9504 (1995); *Niles Broadcasting Company*, Memorandum Opinion and Order, 7 FCC Rcd 5959 (1992).

Accordingly, Pelley has not met the statutory standard for standing set forth in Section 309(d) of the Act, and his pleading will be dismissed as a petition to deny. We will, however, treat and consider the pleading as an informal objection pursuant to Section 73.3587 of the Commission's Rules (the "Rules").¹¹

Private Contractual Claim. Pelley's request for compensation for engineering services rendered at the Station relates to contractual claims that constitute a private controversy. The Commission has consistently held that it is not the proper forum for the resolution of such private disputes, and that the parties should seek redress for such matters in courts of competent jurisdiction.¹²

Further, Pelley has not provided evidence of an injunction or a stay issued by a court¹³ against the proposed sale. In the absence of such a court order, the Commission has routinely acted favorably on license assignment applications. We note, however, that Commission grant of an assignment application merely finds that the parties are qualified under, and the proposed transaction does not violate the Act, the Rules, and Commission policies. As such, it is permissive only and does not prejudice any relief to which the parties may ultimately be entitled.

Marital Property Issue. In addition to his private contractual claim, Pelley contends that Corso failed to seek Commission consent for assignment of the Station's license to Potyka. In support, Pelley provides a copy of the January 3, 1997, Divorce Decree,¹⁴ and argues that the Divorce Decree awards the Station's license to Potyka.¹⁵

Corso responds that she was never legally compelled to sell the Station to Potyka. She explains that, as a marital property settlement, "the [Divorce] Decree was not self-executing other than with respect to the marriage. It was necessary for [Potyka] and [Corso] to actually implement the division of community property, if that division was to be followed."¹⁶ Accordingly, Corso asserts, she and Potyka "were legally free, after the divorce, to mutually agree to alter the distribution of assets."¹⁷ Corso states that, after "emotions cooled"¹⁸ following the issuance of the Divorce Decree, she and Potyka

¹¹ 47 C.F.R. § 73.3587.

¹² See *John F. Runner, Receiver (KBIF)*, Memorandum Opinion and Order, 36 RR 2d 773, 778 (1976); *Decatur Telecasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 8622 (1992).

¹³ We note that the Response to Comment provides, at Exhibit D, a copy of a complaint filed by Pelley instituting a civil action in Arizona court against, *inter alia*, Corso and Potyka. See *Douglas Pelley v. Linda Corso et al.*, Superior Court of the State of Arizona, in and for Gila County, No. CV 2007-250, Sep. 6, 2007.

¹⁴ See Comment, Exhibit 1; Response to Comment, Exhibit A. See also *supra* note 2.

¹⁵ Pelley cites two other documents in support of his allegation. The first is a June 1, 2002, Statement of Purpose ("SOP") for Tri-Media Incorporated ("TMI"). See Comment, Exhibit 2; Corso Opposition, Exhibit C, Annex 1. Corso explains that TMI owns the Station's "hard assets" and will assign these assets pursuant to the Assignment Application. Corso Opposition at 5. The second is a November 4, 2005, Business Organization Agreement ("BOA") between Corso and Potyka, which addresses the ownership of the Station. See Comment, Exhibit 3; Corso Opposition, Exhibit C, Annex II.

¹⁶ Response to Comment at 5.

¹⁷ *Id.*

¹⁸ *Id.*

“independently realized that assignment of the license was in neither’s interest.”¹⁹ Therefore, Corso states, she and Potyka “verbally agreed”²⁰ that the license and control of the Station “would remain with [Corso] until such time as the Station was sold to a third party.”²¹ As recounted in Corso’s sworn declaration, this “oral agreement superseded the Divorce Decree with respect to the license.”²²

We find no merit to Pelley’s argument on the issue. To the extent Pelley challenges compliance with the Divorce Decree, that too is a matter for state court resolution. Contrary to Pelley’s contention, these circumstances offend no Commission Rule or policy. The judge issued the Divorce Decree, awarding the assets of the marital estate to the parties, consistent with the wishes of the parties as expressed in an informal property settlement agreement that the parties had submitted to the court.²³ Thus, the Divorce Decree embodied the parties’ agreement concerning the division of the community property. To the extent that Pelley argues that the parties subsequent oral agreement violated the terms of the Divorce Decree, the Commission is not the proper forum to resolve this issue.

Proceeds of Sale issue. We further find that the record disproves Pelley’s inference that an unauthorized transfer of control has occurred. First, Corso affirms that she has at all times maintained control over the Station operations. Since the issuance of the Divorce Decree, she attests that she “continued to closely monitor and to maintain my control of the Station’s operations, and to satisfy all of the requirements associated with being a Commission Licensee.”²⁴ Corso confirms that she has continued to exercise control “over what programming the Station aired”²⁵ and “who worked at the Station.”²⁶ Corso also asserts that, as stated in the SOP, “I would retain absolute control over the License, and there would be no transfer of control (*de facto* or otherwise) of the Station License or its operations.”²⁷

While Corso held the license as an individual, she acknowledges in her sworn Declaration that during the marriage capital contributions had been made by her former husband at approximately 60 percent. Corso also reports that Potyka assisted with engineering and technical support, as circumstances

¹⁹ *Id.*

²⁰ *Id.* at 6.

²¹ *Id.*

²² *Id.* at 8. Pursuant to her agreement with Potyka, Corso explains, “[Potyka] will be entitled to a portion of the sale proceeds that correspond to the parties’ valuation of the Station License.” Corso Opposition at 6.

²³ See Response to Comment, Exhibit A at 3rd unnumbered page.

²⁴ Corso Opposition, Exhibit C at 3.

²⁵ Corso Opposition at 8.

²⁶ *Id.*

²⁷ Corso Opposition, Exhibit C at 4. Corso further states that she holds the Station license as an individual and “TMI provides support services to [Corso], including the sale of spots for [Corso’s] and TMI’s benefit.” Corso Opposition at 6. Corso recognizes TMI’s support role in providing programming at the Station, but declares that “I have always had the final say in what airs on the station, and I as an individual have signed program-supply agreements for satellite-fed programming, contracts for recorded-music royalty payments, etc.” *Id.*, Exhibit C at 9.

required, and that initial purchases of broadcasting equipment and construction costs were paid from a joint account. Corso clarifies in Annex III to the Opposition that the parties' intent was not to cause the conveyance of any interest in the authorizations issued by the Commission for the Station. Rather, "their intent was to establish a right of Richard Potyka to a 60% share of the value accorded to those FCC authorizations in the event of assignment thereof related to the sale of the Station."²⁸ The Corso Declaration confirms that intent.²⁹ Furthermore, there is no indication that Potyka had any direct ownership interest in the Station. Nor has Potyka held himself out as a principal or sought to exercise control over the affairs of the Station or the Station assets.

In light of Corso's sworn declarations that she retained control of the Station's operations, and that Potyka's interest in the Station license was always understood by Corso and Potyka to be limited to an interest of the proceeds derived from an assignment of the Station license to a third party, we find that Corso did not violate the Rules or the Act by maintaining the Station license in her name, rather than seeking to assign the Station license to Potyka. Moreover, contrary to Pelley's argument, Potyka's claim to a share of the proceeds of the proposed sale of the Station does not establish that an unauthorized transfer of control has occurred or suggest that he is an undisclosed real-party-in-interest. We find, however, that the SOP and BOA constitute documents required to be filed with the Commission under Section 73.3613 of the Rules.³⁰ Corso failed to do so. Therefore, we caution Corso to exercise diligence in the future to fully comply with all Commission requirements.

Conclusion/Actions. Based on the above, we find that Pelley has not raised a substantial and material question of fact warranting further inquiry. We further find that Sunburst is qualified to hold the Station KRDE(FM) license and that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Petition to Deny filed by Douglas Pelley IS DISMISSED, and, when treated as an informal objection, IS DENIED, and that the application for approval to assign the license for Station KRDE(FM), Globe, Arizona (File No. BALH-20070508ABZ) from Linda C. Corso to Sunburst Media-KRDE, LLC IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

Cc: J. Dominic Monahan, Esq.

²⁸ Corso Opposition, Annex III. Corso adds that, "[A]lthough the wording of the [BOA] could lead one to think that [Potyka] had acquired a 60% present interest in the FCC Authorizations for the Station, the intent of the document was that [Potyka] have the right to a 60% share of the value accorded to the FCC authorizations in the event of any assignment of them attendant to a sale of the Station." Corso Opposition, Exhibit C at 5.

²⁹ Corso Opposition, Exhibit C at 1.

³⁰ 47 C.F.R. §73.3613 (requiring licensee to file documents relating to changes in present or future ownership or control of licensee).